THE WILMINGTON JOURNAL

WILMINGTON, N. C., THURSDAY, JANUARY 24, 1867.

etteville and Western Railroad.

We are glad to know that the business men of our city are determined to manifest the great interest which this community has in the extension of the Fayetteville and sion of the road.

merce, on the 10th inst., the following reso- ville is not more interested in the western with the Chamber of Commerce to urge lution was adopted :

Resolved, That a committee, consisting of Messrs. A. Martin, H. B. Eilers and D. R. Murof Commerce in aid of this work.

On Tuesday last, the committee above named, in accordance with the resolution, submitted the following report, which was adopted :

"Your committee appointed to recom-" mend to the Chamber what action should "be taken in reference to the proposed " extension of the Western Railroad, have " had the matter under consideration, and "beg leave to submit the following re-

" port : "The short time allowed us has render-"ed it impossible for us to collect any de-"finite information in regard to the plans " of the projectors or the principal parties "moving in this matter. It is, however, "well known to all the members of this "Chamber, that the object is to extend "the present road from Fayetteville west "to some point on the North Carolina "Railroad, and we deem it entirely unne-"cessary to submit to this Chamber any "arguments for the purpose of demon-"strating the importance to Wilmington, " of her having a voice in determining the "point at which it shall strike that Road.

"Our first and primary object should be " such a form as to enable them to under-" stand and to appreciate the advantages "that may be derived by this city from "the selection of Salisbury as the point of " intersection, and the very great disadvan-"tages that must inevitably result from the "the choice of any point east of that, and " consequently the necessity of her having " a voice in that matter sufficiently potent " to carry the road to that point that prom-" ises the greatest advantages to us.

"That the question may be presented to "the citizens, fairly and fully, with all the "arguments and information required to " enlist them in the support of such meas-" ures as may be found necessary to give "them, together with the citizens of Fay-"etteville, a controlling influence in deter-" mining the direction of that road, we re-"commend that a committee be appointed "to confer with the Mayor and Board of "Aldermen, as to the best method of accom-" plishing this object, and that the com-" mittee urge upon the Board to make ap-"plication to the Legislature without de-"lay, if that should be found necessary, " for authority to take stock in that road, "and to issue bonds for that purpose, so that, "should the citizens hereafter determine "to support the measure, there may be no "obstacle in the way of their doing so "through the corporation.

"We further recommend that a commit-"tee be appointed to attend the meeting " of the Stockholders of the Western Rail-" road to be held in Fayetteville on the 22d "inst., for the purpose of obtaining such "information as may be necessary to lay "before our citizens and city authori-"ties, to secure their co-operation, and at "the same time assure the people of Fay-" etteville that we are fully alive to the im-"portance of the enterprise, both to them "and to us, and of our determination to "aid them in it as far as our means and " influence will permit."

The President appointed, as the committee to attend the meeting in Fayetteville Messrs. Alfred Martin, O. G. Parsley, A. H. VanBokkelen, E. Kidder and A. E. Hall. We sincerely hope these gentlemen will accept the appointment and attend the meeting. Its vast importance demands of all of them a sacrifice of their time and comfort to represent Wilmington at that assemblage of stockholders. We know not how far the meeting will decide the grave questions at stake, or what steps may be taken in the matter, but a golden opportunity may be lost entirely, or inimical influences brought to bear that may be most injurious to us. We have the utmost confidence in weight to their counsels, and their judgments must command the respect of the meeting.

The Chamber of Commerce has shown a proper interest in a matter which must have much influence upon the future welfare of Wilmington, and its prompt and decided action shows the importance of such organizations and the general benefit to be derived from associations of our best citizens We have labored with much earnestness. through our columns, to awaken our people to the great interests at stake, and the necessity for concerted action, and we accept this timely reply from so honorable a body as the Chamber of Commerce, representing almost the entire business interest of the city, as compensation for our labors, and sincerely trust much good will result from

As to the specific recommendations involved in the report of the Chamber of Commerce, we will make reference to them to

Railroad\_The Chamber of Commerce.

Yesterday, in publishing the action of the Chamber of Commerce upon the entension of the Fayetteville and Western Rail- the Western Railroad power to extend its existing order established without their co-

important matter the subject of a special most eminently fitted to represent the in- the thousands of other articles needed in report-practical and wise recommendations | terests of Wilmington, and sincerely trust | the store or on the plantation. areadopted, and steps in augurated to secure that they will accept the important duties. With such views, therefore, while w tives in that meeting. We should by all connection with Salisbury, which we hope At a meeting of the Chamber of Com- means have delegates present, for Fayette- to reach by another route, we cannot join terminus of that road than Wilmington the great disadvantages that must result chison, be appointed to take into consideration appreciated, because neither termini are town. We do most heartily unite with gives the subject the least thought.

While not differing with the report of the vantages of Salisbury as the western ter- routes and markets open to it. minus of the road, we are not prepared to urge upon our people "the very great disadvantages that must inevitably result from the choice of any point east of that," as such terminus. If we take the naked advantages to be derived from a connection with Salisbury as compared with those of High Point or Thomasville, there certainly can be no question as to the very great superiority of the former, but there are ulterior circumstances which we think render to either Wilmington or Fayetteville, to which we respectfully desire to call atten-

miles, while it will be necessary to build upwards of eighty miles of railroad to reach the Uwharrie mountains, must be parallel to, and but ashort distance from, the North now, is not to be weighed against the immense advantages to be derived from a contension) North Carolina Railroad, at present invigorated with new life, and under that the oath shall be preserved among the court, and are responsible to it for profesthe guidance of competent officials, making to reach the Tennessee line at Paint Rock, pains and penalties of that offence. via Asheville.

But cannot and will not these advantages to extend its road from Egyyt to some gage its road and property. A similar privilege was asked and obtained by the Wilmington, Charlotte and Rutherford Railenable the former to secure funds upon act of Congress. their mortgage bonds, will also give sucas much the larger and wealthier corporation. If the former, then, can push its of the Legislature, the latter will also, and before the Western Railroad be finished to Charlotte, which would give an unbroken connection with Lincolnton, at least. From Newton, on the Western twelve or fifteen miles, along a level ridge. around Salisbury, that a direct connection with that town would give us, and to construct eighty miles of road to secure this

only interested in securing their western connections, and will give us no aid and but little encouragement in this undertaktrade, which must be divided between Richmond, Norfolk, New Berne and Morehead City, Fayetteville and Wilmington, and probably Charleston.

High Point or Thomasville, in the direccorner of Surry, Forsyth, Stokes and Yadkin counties, and only twenty to twenty-five miles from the Virginia line. We published, some two weeks since, the proceedings of a meeting at Mt. Airy, showing that the people of that section were alive to the importance of a railroad connection with the seaboard, and were determined to connect their country with the North Carolina Railroad. On Tuesday last, Mr. Woltz, the delegate from Carroll county, in the Virginia Legislature, introduced into the House of Delegates a bill asking and Tennessee Railroad at Wytheville. The every probability of its passing the House. Thus we see that preparation is being made entirely undeveloped, and which in all pro-Extension of the Fayetteville and Western bability will never be reached by a railroad unless by this scheme.

should so determine, there would be no transportation. To the whole of this rethe meeting of the stockholders of the rivals, and the merchant or farmer, who

-an interest which is not at present so fully from the choice of any point cast of that

## IMPORTANT DECISION.

The Test-Dath Pronounced Unconstitution

Mr. Justice Field (having delivered the I am also instructed by the court to de-

liver the opinion in the matter of the petition of A. H. Garland. files of the court; and if any person take | sional misconduct. it falsely he shall be guilty of perjary, and,

addition of a clause requiring the adminisroad, and the same state of affairs that will tration of the eath in conformity with the

In May, 1861, the State of Arkansas, of cess to the like efforts of the Wilmington, an ordinance of secession which purported gaged in the exercise of their appropriate Charlotteand Rutherford Railroad, with pos- to withdraw the State from the Union, and judicial functions," In ex parte Secomb, a sibly greater chances in favor of the latter, afterwards, in the same year, by another mondemus to the Supreme Court of the gress of that Confederacy, she was received denied by this court on the ground that the road westward, by means of the recent act as one of its members. The petitioner foll removal was a judicial act. lowed the State and was one of her representatives, first in the lower House, and afcould reach Salisbury, the Wilmington, that Confederacy, and was a member of the Charlotte and Rutherford Railroad would Senate at the time of the surrender of the Confederate forces to the armics of the

In July, 1865, he received from the Pre-

thorty in hostility to the United States. 4. The extension of this road to and beyond That he has not yielded a voluntary sup-

inal laws of the country, and some of them may or may not have been offences, according to the circumstances under which they were committed and the motives of the pardeclare that he has not been guilty of this crime, not only during the war of rebellion, but during any period of his life since he has been a citizen. The second clause goes the North Carolina State line to the Virginia not only the giving of aid and encouragement of a treasonable nature to a public bill has been recommended by the commit- any kind to persons engaged in armed hostee on Roads and Internal Navigation, with | tility to the United States. The third clause applies to the seeking, acceptance, or exercise, not only of offices created for the purpose of more effectually carrying on hosin both States, beyond the North Carolina tilities, but also of any of those offices Railroad to meet us, and open a country which are required in every community, whether in peace or war, for the administration of justice and the preservation of order. The fourth clause not only includes those who gave cordial and active support It can be no objection to this argument to the hostile government, but also those that the act of the Legislature only gave who yielded a reluctant obedience to the

Board of Aldermen to make application to are among the richest agricultural sections ties, the act as against them operates as a ties and disabilities, and restores him to all among which are life, liberty, and the purdelicate to say Congress exercises power the present session of the General Assem- of our State, and Surry county, in this An exclusion from any of the professions new man, and gives him a new credit and or and position are open to every one, and bers of Congress are as much bound by bly, if such legislation be necessary, for State, and Carroll and Wythe counties, in or any of the professions of life for capacity. There is only this limitation to all are protected equally under the law.— oath to support the constitution as the or any of the ordinary avocations of life for capacity. There is only this limitation to all are protected equally under the law.— oath to support the constitution as the ordinary avocations of life for post conduct. The constitution are the constitution as the ordinary avocations of life for law of wights for post conduct. authority for the City of Wilmington to Virginia, abound in copper, lead, zinc past conduct can be regarded in no other its operation: it does not restore offices fortake stock in the road, so that, if it should and iron mines, among the richest in the light than as a punishment for such con-The Chamber of Commerce and the Fay- be deemed necessary, and the citizens world, which are locked up for want of duct. The exaction of the oath is the mode others in consequence of conviction and defined. provided for ascertaining the parties upon judgment. The pardon produced by the The court then proceeded to the considering the parties upon judgment. The pardon produced by the whom the act is intended to operate, and, We have already expressed our approval completion of this road, must become the tionable character. All enactments of this the appointment of delegates to attend market for all West India produce without kind partake of the nature of bills of pains is subject to certain conditions which have says no State shall pass a bill of attainder in the Congress to fix the number of judges and penalties, and are subject to the con- been complied with. The effect of this par- or ex post facto law. A bill of attainder is a of the Supreme Court, fix their salaries, stitutional inhibition against the passage don is to relieve the petitioner from all pen- legislative act which involves punishment provide for all necessary officers, such as Western Railroad in a substantial manner. Western Railroad, and regard those seconds to purchase his supplies of such of bills of attainder, under which general alties and disabilities attached to the offence without trial. If less than death it is a bill of attainder which general alties and disabilities attached to the offence without trial. If less than death it is a bill of attainder which general alties and disabilities attached to the offence without trial. The Chamber of Commerce has made this lected by the President of the Chamber as articles, or orders them, will also supply designation they are included. In the exclusion which the statute adjudges, it im- bellion. So far as that offence is concern- includes pains and penalties. It assumes act of 1789, commonly called the judiciary poses a punishment for some of the acts ed he is thus placed beyond the reach of the guilt of the parties without the safe- act, it is enacted that parties may appear specified, which were not punishable, or punishment of any kind; but to exclude guard of trial, and it fixes the degree of and manage their causes personally or acmay not have been punishable at the time him by reason of that offence from contin- punishment in accordance with its own cording to the rules. It is believed there to this city the benefits of a proper exten- which will devolve upon our representative fully appreciate the great advantages of a the world where it adds a new punishment to that then pre- ed right is to enforce a punishment for that of this kind were most passed in England | there are not attorneys or practitioners at scribed, and it is thus brought within the offence notwithstanding the pardon. fourth inhibition of the Constitution If such exclusion can be effected by the gross substance of them, forgetting justice cited recognizes the utility of this class of

to consider at length the meaning of a bill cannot be reached by direct legislation .the extension of the Western Railroad and report within the corporate limits of our city, but clause of the Constitution forbidding their Congress thus to inflict punishment benext, what action shall be taken by the Chamber which must force itself upon every one who we think it is to the advantage of this city passage by the States, and it is unnecessary which must force itself upon every one who to connect itself with a rich country, al- to repeat here what we there said. A like From the petitioner, therefore, the oath were properly named as engaged in fact. - an exclusive right. Every State in the Unthough undeveloped, yet untouched by prohibition is contained in the Constitution required by the act of January 24, 1865, other roads, than to form a double connect against enactments of this kind by Con- cannot be exacted, even were that act not that Earl Carolan should suffer exile. Chamber of Commerce as to the great ad- tion with a region that already has several gress, and the argument presented in that subject to any other objection than the one the act of Congress under consideration in must be granted.

mings rs. The State of Missouri) proceeded will of its creator, and the possession of 24, 1865, to be taken by attorneys and stitution. If the clause, instead of mentions not prohibited by the Constitution .-Attorneys and counsellors are not officers dered. of the United States. They are not elected On the second of July, 1862, Congress or appointed in the manner prescribed by bassed an act prescribing an oath to be ta- the Constitution for the election or appoint one or other of the latter, if not preferable, ken by every person elected or appointed ment of such officers. They are officers of at least as not attendant with disadvantages to any office of honor or profit under the the court, admitted as such by its order up-Government of the United States, either in on evidence of their possessing sufficient CUMMINS vs. THE STATE OF MISSOURIthe civil, military, or naval departments of legal learning and fair character. Since the public service, except the President of the statute of 4th Henry IV. it has been the United States, before entering upon the practice in England, and it has always The distance from Egypt to High the duties of his office, and before entitled been the practice in this country, to Point or Thomasville, is about fifty-five to its salary or other emoluments. On the obtain this evidence by an examination of 24th of January, 1865, Congress passed a the parties. In this court the fact of the supplementary act, extending its provisions admission of such officers in the highest so as to embrace attorneys and counsellors | court of the States to which they respective-Salisbury, half of which distance, on ac- of the courts of the United States, which ly belong for three years preceding their souri, involving the constitutionality of the count of the digression necessary to avoid provides that after its passage no person application is regarded as sufficient evidence test-oath of that State. The plaintiff was ows. It aims at things, not names. shall be admitted as an attorney or coun- of the possession of requisite legal learn- a Roman Catholic priest and convicted by Chief Justice Marshall says an expost To suffer treasonable sentiments unchecksellor to the bar of the Supreme Court, ing, and the statement of counsel moving the courts for advising and preaching withand after the 4th of March, 1865, to the bar their admission sufficient evidence that out having first taken the required oath, not punishable at the time it was committed, source. If all the attorneys in the past had "to place this matter before the citizens in Carolina Railroad. The question of cost, of any circuit or district court of the United to have been specified or different testimony. a very serious one at all times, and more so States, or of the Court of Claims, or be allowed to appear and be heard by virtue of ment of the court that the parties possess any previous admission or any special power the requisite qualifications as attorneys and the Supreme Court of the State affirmed ishment for what was not punishable at the is so essential to a lawyer it cannot be deof attorney, unless he shall have first taken counsellors, and are entitled to appear as the judgment. The following is a mere time the act was committed. The act to nied that the law was intended to secure nection at Salisbury with the Western (ex- and subscribed the oath prescribed in the such and conduct causes therein. From

> They hold their office during good bean earnest, and, we trust, successful effort upon conviction, shall be subject to the havior, and can only be deprived of it for misconduct, ascertained and declared by At the December term of 1860, the peti- the judgment of the court, after opportunitioner was admitted as an attorney and ty to be heard has been afforded. Their counsellor of this court, and took and sub- admission and their exclusion are not the be reached by other means equally expediscribed the oath then required. By the exercise of a mere ministerial power. The tions and vastly more economical? To en- second rule as it then existed, it was only court is not in this respect the register of able the Fayetteville and Western Railroad requisite to the admission of attorneys and the edicts of any other body. It is the excounsellors of this court that they should ercise of judicial power, and has been so have been such officers for the three pre- held in numerous cases. It was so held by point on the North Carolina Railroad, the vious years in the highest courts of the the Court of Appeals of New York in the State gave the corporation power to mort- States to which they respectively belonged, matter of the application of Cooper for adand that their private and professional mission. "Attorneys and counsellors," character should appear to be fair. In said the court, "are not only officers of the March, 1865, this rule was changed by the court, but officers whose duties relate almost exclusively to proceedings of a judicial nature, and hence their appointment may, with propriety, be entrusted to the courts; and the latter, in performing this which the petitioner was a citizen, passed duty, may very justly be considered as enordinance, attached herself to the so-called Territory of Minnesota to vacate an order Confederate States, and by act of the Con- removing an attorney and counsellor was

the court, "where a mandamus was issued to marriage without taking the oath. False an inferior tribunal commanding it to re- swearing is made punishable by imprisonverse or annul its decision, where the decision was in its nature a judicial act, and within the scope of its jurisdiction and dis- this country which the court could discov-North Carolina Railroad, but forty miles for all offences committed by him by par- that it rests exclusively with the court to limited to the present, and were not ad- office of a teacher or a priest, etc. beyond Salisbury, to Lincolnten, it is but | ticipation, direct or implied, in the rebel- | determine who is qualified to become one | ministered in particular instances of past asks permission to continue to practise as and for what causes he ought to be remov- only directed against individuals who op-He rests his application principally upon more than a mere indulgence, revokable at for the advantage of either Fayetteville or two grounds: First, that the act of January the pleasure of the Legislature; it is a Wilmington, would be fishing in the tub 24, 1865, so far as it affects his status in the right of which he can only be deprived by is debarred from the employments specified. court, is unconstitutional and void ; second, the court for moral or professional delin- The court admitted the proposition of the that if the act be constitutional, he is re- quency. The Legislature may undoubted- learned counsel of Missouri that the States been a citizen thereof. 2. That he has not constitute a qualification, the condition or ing; and if, at great expense, we complete vountarily given aid, countenance, counsel, thing prescribed must be attainable, in thethe road, we will have but a share of the or encouragement to persons engaged in ory at least, by every one. That which armed hostility thereto. 3. That he has from the nature of things, or the past connever sought, accepted, or attempted to dition or conduct of the party, cannot be exercise the functions of any office whatso- attained by every citizen, does not fall ever under any authority or pretended an- within the definition of the term. To all those by whom it is unattainable it is a disqualification which operates as a perpetual tion to their fitness for their pursuits and ported the imposition of the present expur- will be agreed it applies to criminal causes port to any pretended government, author- bar to the office. The question in this case professions. There was no connection be- gation oath. Under this provision the most alone, and not to civil proceedings which ity, power, or constitution within the Unilis not as to the power of Congress to pre- tween the allegation that Cummins left the flagrant violations of justice may be com- affect private rights respectively. Cases tion of Mt. Airy, in Surry county, a dis- ted States hostile or inimical thereto. 5. scribe qualifications, but whether that pow- State to avoid the draft and the administra- mitted, and individuals deprived of their were cited in support of the argument, and the gentlemen named, and their character tance of eighty-five miles, the length re
That he will support and defend the Coner has been exercised as a means for the line of the sacraments of his church; nor civil rights.

That he will support and defend the prohiline of the sacraments of his church; nor civil rights. quired to reach Salisbury, would complete quired to reach Salisbury, would complete enemies, foreign and domestic, and will bition of the Constitution. That this result cannot be effected indirectly by a State ness of lawyers, or professors, or teachers, an expurgatory oath as a means of punish- imposed an additional punishment for any This last clause is promissory only, and under the form of creating qualifications, or their want of ability in acting as mana- ment. The subject was regarded so impor- other act. He maintained that the purrequires no consideration. The questions we have held in the case of Cummings vs. gers or trustees of corporations. It was tant as to engage the attention of eminent pose of Congress was to require loyalty as a presented for our determination arise from The State of Missouri, and the reasoning manifest on the simple statement of their lawyers and distinguished statesmen of the condition to practice in the courts, and not.

> These views are further strengthened by intended to reach persons, not their cal- the people as the result of the Revolution. The man guilty of counterfeiting may be a consideration of the effect of the pardon ling; not because their acts unfitted them It was a wise axiom that every man is be- saved by the President from the gallows; produced by the petitioner and the nature for their calling, but because it was thought lieved to be innocent until he is proved but a lawyer cannot by him be readmitted of the pardoning power of the President, their acts were deserving of punishment, guilty. The reversing of this was to hold to this bar. It remains for the legislative ties. The first clause covers one form of The Constitution provides that the Presi- and in no way but by depriving them of out a bribe to perjury. It deprived the cit- power to say to what extent relief shall be dent "shall have power to grant reprieves citizenship. and pardons for offences against the United States, except in cases of impeach- the deprivation of life, liberty, and pro- get that trial by jury should remain invio- pronounced to-day, Judge Miller quoted ment." The power thus conferred is un- perty was no punishment at all. A dis- lable forever, etc. The same view was em- Justice Story, who said the whole power as limited with the exception stated; it ex- qualification from holding office, as an im- braced by the judiciary on analogous ques- to religion is left to the States to be acted for a charter for a railroad extending from beyond the limits of treason, and embraces tends to every offence known to the law, peachment; also, tions. The court said in conclusion, the on in their own judgment; and in opposiand may be exercised at any time after its the preventing attorneys practising in the judgment of the Supreme Court of Missouri tion to the views of the majority of the ment of a treasonable nature to a public enemy, but also the giving of assistance of ings are taken, or during their pendency, of William Third any person speaking judgment to reverse the judgment of the Suprement of the Suprem or after conviction and judgment. This against the Christian religion, or speaking Circuit Court of Pike county, and also with penalty on the priest of the Obitvary chappower of the President is not subject to or writing against the Divine Spirit, was directions to said Circuit Court to enter an el for performing service in the Church at legislative control. Congress can neither liable for the first offence to be rendered order discharging the defendant from im- St. Augustine. The priest relied on the limit the effect of his pardon nor exclude incapable of holding offices of trust or profrom its exercise any class of offenders .- fit, and for the second to be sent to prison. out delay. The benign prerogative of mercy reposed Statute, 2, George Third, for contempt in him cannot be fettered by any legisla- against the King's authority took away the tive restriction. Such being the case, the right to receive any legacy, deed, or gift, inquiry arises as to the effect and operation or vote at elections for Parliament, with a of a pardon. On this point all the author- penalty of five hundred pounds. Black- dissenting opinion in the above case as well tion. The constitution of Missouri says ities concur; a pardon reaches both the stone says the loss of liberty consists in the as in the case of Garland. It was hoped certain classes shall not exercise their fund punishment prescribed for the offence and loss of lands or profits of lands for life, and the effect of the circumstances under which tions unless they show their loyalty. This the guilt of the offender, and when the pardon is full it releases the punishment and don is full it releases the punishment and

against the passage of an expost facto law. execution of an expurgatory oath covering and trampling on the rights of others .- men. In the case of Cummings vs. The State the offence, the pardon may be avoided, of Missouri, just decided, we had occasion and that accomplished indirectly which dividuals by name. By the Eighth Henry of attainder and an ex post facto law in the It is not within the constitutional power of abettors, confederates or adherents, should without a bar, the practice is a privilege on

case against certain clauses of the Constitu- just stated. It follows, from the views ex- Missouri had stated in terms that Cummins good moral character. The continuance of tion of Missouri is equally applicable to pressed, that the prayer of the petitioner was guilty of being in armed hostility to the right is made by law the continuance

sellor is not like an office created by an act must be granted; and the amendment to preach or teach in the institutions of the is done by law, statutory or common, which of Congress, which depends for its contin- the second rule of the court, which requires land, there is no question that this would is equally the expression of public will. uance, its powers and its emoluments on the the oath prescribed by the act of January be a bill of attainder in view of the Con- Attorneys are subject to legislation the which may be burdened with any condi- counsellors, having been unadvisedly adop- tioning his name, had declared all persons to prescribe the qualifications of attorneys ted, must be rescinded, and it is so or subject to like deprivations, the clause and prescribe oaths. The act just declared

Mr. Justice Miller delivered a dissenting

## THE TEST-OATH CASES.

DECISION OF THE SUPREME COURT.

In the Supreme Court of the United ties are attached; some of them are not law. duty, or ever expressed his dissatisfaction purgatory oath. with the Government. Every person una-

mens in the penitentiary. nected by the closest ties of blood, he is de-|sible condition. no means follows that the State can inflict office of honor or profit.

bar, priest or preacher of any doctrine

punishment for acts which were not punishable when committed. It was evident from the nature of the pursuits and professions of the parties placed

Such bills are generally directed against init was declared that Earl Kildare, and his officers. As there is no instance of a court stand and be attained and convicted of such conditions as the law-making power high treason as though every one of them may prescribe. It is a privilege, and not

clared unable to subscribe to the oath, and | The Constitution of the United States | brutem fulmen, and punishment could be The people of Salisbury already have leased from compliance with its provisions by prescribe qualifications for the office, possessed all the attributes of sovereignty, stitutional inhibition may be evaded at the law was made to apply to those engaged competing lines and markets, and now are by the pardon of the President. The oath with which he must conferm, as it may, and among the rights reserved to the States pleasure. Take the case of a man tried for in the rebellion, but this is a mistake. It prescribed by the act is as follows: 1. That where it has exclusive jurisdiction, pre- was the power to determine the qualifica- treason, and, if convicted, pardoned. Ne- is applicable to all. The act does not de the deponent has never voluntarily borne scribe qualifications for the pursuit of any tions for office, and the conditions on which vertheless, the Legislature might prescribe clare confiscation, nor does it pronounce arms against the United States since he has of the ordinary avocations of life; but to citizens may exercise their callings and that, unless he took an oath that he never sentence or inflict any punishment. It leaves pursuits within its jurisdiction. But it by did the act charged, he should never hold the party himself to determine the act of

Suppose the minority should get the con- sentence or innocence. under disability by the constitution of Mis- honor, profit or trust, should take an oath called a bill of attainder. As to its being souri that their acts had no possible relational that he never advocated, advised or sup- an ex post facto law and a penal statute, it

other clauses. These all relate to past acts. upon which that conclusion was reached acts that there was no relation. The oath time. Alexander Hamilton demonstrated as a majority maintain, a punishment for Some of these acts constituted, when they applies equally to similar action on the part could not be applied as to whether the part that it was in violation of the Constitution, past offences. The President cannot, by ties were qualified or not. The oath was which secured the rights and liberties of pardon or otherwise, dispense with the law. izen of the advantage of leaving the burden extended. The court did not agree that less than of proof on his persecutor. Let us not for-

## Dissenting Opinion.

Associate Justice Miller delivered the mali was dismissed for the want of jurisdicthe Fayetteville and Western Railroad, we approved most heartily their object and the purpose at which they aimed.
The interest we have taken in this subject is well known, and we are glad to have
such honorable and able assistance. With
them, we most cheerfully urge upon the them, we most cheerfully urge upon the The Valleys of the Yadkin and Watauga prescribed cannot be taken by these parter conviction, it removes the penaltal men have certain inalienable rights, be one of profound interest. It is always Davis concurred in this opinion.

petitioner is a full pardon for all offences eration of the constitutional question. tion one, of the constitution says the judicial by him committed arising from participa- The Constitution contains what may be power of the United States shall be vested during the rebellion in England, or the law. The enactment which has just been They are as essential to the working of

the court as are marshals, sheriffs and other

So the declaration in Charles the Second, ion, and every civilized government on earth, have laws by which the right to prac-If the third article of the Constitution of tice depends upon professional skill and the United States, or had said he left the of these qualities. Attorneys are often de-The case of R. H. Marr is similar in its State to avoid being drafted, and that he prived of the privilege when it is discoverfeatures to that of the petitioner, and his was, therefore, deprived of his right to ed they are of bad moral character. This would be equally open to objection; and unconstitutional is nothing more than a if it had declared that all such persons law that attorneys shall take the same oath would be held guilty, provided that by a as other officers in civil or military life. day specified they did not do certain acts, This looks at their past and future conduct, that would be within the constitutional in- and all has reference to their overthrow hibition. In all these cases it would be of the government. They are required legislative judgment without the form of to answer that they are not guilty of treasecurity of citizens established by our tri- son in the past and will give their allegibunals. The question presented is one of ance to the government in the future. That form and not of substance. The existing true and loyal attachment to the governclause presumes parties guilty, from which ment is made the qualification of attorneys States on Monday, Associate Justice Field they cannot release themselves without an seems to be plain. History shows memsaid he had been instructed to deliver the expurgatory oath. It is certain the legal bers of the legal profession are powerful in opinion in the case of John A. Cummins, result is that what cannot be done directly the government, as they are the moulders plaintiff in error, against the State of Mis- cannot be done indirectly. The Constitu- of public sentiment, and they aid in the and from among them judges are selected. On appeal from the Circuit Court, Thatcher vs. Peck makes it an act of pun- rors of the rebellion. If this qualification outline of the opinion: The oath, by the which Judge Marshall makes reference was that position. The majority of the court, act of July 2, 1862. The act also provides its entry the parties become officers of the Constitution of that State, imposes more passed by the Legislature of Georgia, re- however, do not base their decision on a than thirty distinct affirmations and tests. pealing a previous act by which land had mere absence of authority to enact laws on Some of them constitute offences of the been granted. It was decided the repeal- the subject under consideration, but insist highest grade, to which the heaviest penal- ing act had the effect of an ex post facto that the constitution prohibits the enactment of such laws, both by Congress and recognized by statute, while others are not The clause of the Missouri Constitution the States; that the present law is in the blameworthy. They require him not only did not in terms define any crime, or de- nature of an ex post facto law, and that the to swear that he was not only not in hostili- clare punishment inflicted, but presumed provisions of the Missouri constitution are ty to the United States, but that he never the same result as if the crime had been in conflict with the constitution for the nauifested adherence to the cause of the defined and the punishment prescribed. | same reason, and are therefore void. First enemy or desired a triumph over the arms It aimed at some persons who directly or in regard to bills of attainder, we must reof the United States, or that he ever ex- indirectly had aided the rebellion, or es- cur to bills of attainder passed by the pressed sympathy for the rebels, or ever caped proper responsibility of citizens in British Parliament, to enable us to ought to promote the ends of those en- time of war, and was intended to deprive arrive at a conclusion as to what gaged in war against the United States and certain persons of offices of trust and emol- was intended to be prohibited by horities, or ever left the State to escape ument. Such deprivation is punishment; the constitution. The word "attainder" is enrolment or the performance of military nor is it a way which is opened by an ex- defined to be the corruption of the blood of the criminal capitally condemned, which Now, some of these were not offences takes place by the common law on sentence ble to take this oath was declared incapa- when the acts were committed. It was not of death. The party attained lost all power ble of holding offices of trust, honor or then an offence to avoid the enrolment or to receive or give by inheritance. This atemolument, or of acting as a trustee or the draft, how much soever it might be a taint or corruption of blood continued to manager of any corporation now or hereaf- matter of censure. Some of the acts at be the law of England at the time our couter to be established, or from teaching in which the Constitution was directed were stitution was formed, and may be the law an educational institution, or holding real offences at the time, but the clause which on condemnation of treason this day. Bills estate for such religious society or congre- prescribes further penalties is within the or acts of attainder declared persons atgation, &c. And every person holding any nature of an ex post facto law. The clause tained or blood corrupted so as to loose such office at the time the Constitution in question subverts the presumption of heritable qualities. Section second of the went into effect was required to take the innocence and perverts the rules of evi- constitution declares that Congress shall oath. In default of taking the oath his dence, which by the common laws are fun- have power to declare the punishment of office becomes vacant. No attorney at the damental. It presumes the parties to be treason, but no attainder of treason shall guilty and declares their innocence can be work corruption of blood or forfeiture ex-"We are not aware of any case," said or order, is permitted to teach or solemnize shown only in one way, and that by except during the life of the person attained. purgation. Put this clause in the form of | He then explained at some length his views a legislative act and it would read: Be it on this section, showing that the framers nacted, etc., That all persons in armed hos- of our constitution struck boldly at despotic tility to the United States shall, on convic- machinery by prohibiting the passage of each tion, not only be punished as the law pro- post facto laws and bills of attainder with cretion." And in the same case the court er. It is, first, retractive, and if taken vided at the time of the offence, but also the exception which the constitution proobserved that "it has been well settled by years hence would cover the intervening rendered incapable of holding offices of vided. It remained to be seen whether the sident of the United States a full pardon the rules and practice of common-law courts period. In other countries test-oaths were trust, honor, or emplument, or exercise the law of Congress and the Missouri constitution were brought within this class of bitls No one could doubt that this third arti- It is not claimed that the act works corrup lion. He now produces this pardon, and of its officers as an attorney and counsellor misconduct. Secondly, the oath is not cle, if thus rendered, would be ex post facto, tion of blood. Therefore it is not a bill of By the building of this short connecting link we could reap all the advantages, with link we could reap all the advantages and some advantages are really link and the advantages are really link and the advantages are really link and the advantages are really links are really links. It links a link and the advantages are really links are really links. It links are really links are really links are really links are really links are real the exception of the country immediately act of January, 21, 1865, and the rale of clothed with his office, does not hold it as makes no distinction between acts arising would impose penalties without the form of ain against persons whose names were unthis court, which he is mable to take by a matter of grace and favor; the right from malignity and acts springing from afreason of the offices he held under the Con- which it confers upon him to appear for fection. If any one ever expressed sympa- Missouri imposed an oath which it was im- names of the persons to be made out, and suitors, and to argue causes, is something thy for the rebellion, even if he were con- possible for all to take. It was an impos- to prove their association with the crime cannot be evaded in the form by which the visited only by proof of the guilt. No perpower of the State is exerted. If this can son was pointed out by the act of Congress guilt, or announce and pronounce his own trol of the State government, nothing could | It designates no name or guilt, and proprevent them from requiring that every nounces no sentences and inflicts no punperson, as a condition of holding office of ishment; therefore it can in no sense be

As to the opinion in the case of Cummins

him; but the Court replied the constitution makes no provision to protect citizens of a State in their religious liberties. That was left to the State laws, and the case of Po-